

Committee of Adjustment Comments from Staff, Public and Agencies



Application Details

Application Number: A-19/23
Location: 201 Elmira Street South
Hearing Date: April 13, 2023
Owner: Paisley + Whitelaw Inc.
Agent: Trevor Hawkins, MHBC Planning
Official Plan Designation: Medium Density Residential, Significant Natural Areas and Natural Areas, Strategic Growth Area
Zoning Designation: General Apartment (R.4A) Zone

By-Law Requirements: The By-Law:

- a) requires an angular plane from a street to be a maximum of 45 degrees; and
- b) defines “finished grade” as the average elevation of the finished surface of the ground, excluding any artificial embankment, immediately adjoining the base of the exterior walls or supports of a building or structure.

Request: The applicant is seeking relief from the By-Law requirements to permit:

- a) the angular plane from the street to be a maximum of 59 degrees for the proposed building “D” as shown on the site sketch, with the angular plane being measured from the centreline of Whitelaw Road at the average grade on Whitelaw Road across from the frontage of the building; and
 - b) that the definition of “finished grade” be considered as the finished grade at the front entrance to the proposed building facing Whitelaw Road.
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Staff Recommendation

Refusal

Comments

Planning Services

The applicant is in the process of constructing a multi-unit residential apartment complex on the subject property. The requested variance relates to proposed building ‘D’, adjacent to Whitelaw Road, as shown on the public notice sketch, which is proposed to be an eight (8) storey, 227-unit apartment building located on top of a parking structure. Through the site plan approval process for Building ‘C’ and the parking structure adjacent to Whitelaw Road, discussions were held with staff

regarding the future placement of a building with residential units along the Whitelaw Road frontage. The master plan submitted in support of the site plan application for Building 'C' and the parking structure shows a grey box with a note that says "Potential Future Development" on top of the parking structure. The plan does not indicate the height or number of units for Building 'D' on the approved site plan for the parking garage. A pre-consultation site plan application for Building 'D' (the building subject to the proposed variances) has not been submitted to the City for review.

The subject property is designated "Medium Density Residential" and "Significant Natural Areas and Natural Areas" in the City's Official Plan. Development or site alteration is not permitted in the "Significant Natural Areas and Natural Areas" land use designation and no development is proposed within this designation. Permissible uses within the "Medium Density Residential" land use designation include multiple unit residential buildings, such as townhouses and apartments. The maximum building height in this designation is six (6) storeys and the maximum net density is 100 units per hectare. The existing zoning that applies to this subject property predates the City's current Official Plan and would allow for a building height that exceeds the height permissions in the "Medium Density Residential" land use designation. The applicant requires two (2) variances that would facilitate the construction of an eight (8) storey building which is not in conformity with the "Medium Density Residential" land use designation height permissions. The requested variances do not meet the general intent and purpose of the Official Plan.

The subject property is zoned "Residential General Apartment" (R.4A) according to Zoning By-law (1995)-14864, as amended. The first variance requested is to Section 4.16.2 of the Zoning By-Law. The applicant is requesting permission to permit the angular plane from the street to be a maximum of 59 degrees for the proposed building "D" as shown on the site sketch, with the angular plane being measured from the centreline of Whitelaw Road at the average grade on Whitelaw Road across from the frontage of the building, whereas, the Zoning By-law requires an angular plane from a street to be a maximum of 45 degrees. The purpose of the angular plane is to regulate a building's mass and volume adjacent to a public street and to help establish a pedestrian scale relationship between the height of a building and the width of a street. Staff are concerned that the requested variance to angular plane is premature and being done in isolation without knowing why the proposed building can not comply with angular plane requirements set out in the By-law or if an alternate building design could achieve the angular plane requirements of the Zoning By-law.

The second variance requested is to Section 3.1 of the Zoning By-law. The applicant is requesting that the definition of "finished grade" be considered as the finished grade only at the front entrance to the proposed building facing Whitelaw Road, whereas, the Zoning By-law defines "finished grade" as the average elevation of the finished surface of the ground, excluding any artificial embankment, immediately adjoining the base of the exterior walls or supports of a building or structure. The definition of "finished grade" is directly tied to how "building height" is measured and interpreted. By varying this definition, the applicant would essentially be able to

construct a building that exceeds the building height permissions in the Zoning By-law. The requested variances do not meet the general intent or purpose of the Zoning By-law.

The general intent and purpose of including definitions in a Zoning By-law is to provide a clear, standard interpretation of uses and regulations that apply to all properties. Definitions remove ambiguity when interpreting the Zoning By-law. Planning staff are of the opinion that it is not appropriate to vary a definition on a site-by-site basis to suit the needs of a development and make it "fit" with the regulations of the applicable Zone. It would be more appropriate to vary a specific zoning regulation, in this case, the maximum building height so that the neighbourhood and Committee have more clarity as to what will be built. It is also not appropriate to review and comment on variances in isolation without comprehensively reviewing the variances in terms of the overall site development. In the absence of a formal site plan application including detailed elevations for building 'D', and a revised master plan for the overall property, it is not clear what the overall impact of the proposed variances would be on the site and surrounding neighbourhood. The variances as requested would facilitate the construction of a building that exceeds the existing permissions of the Zoning By-law. The requested variances are not considered to be desirable for the appropriate development of the land or minor in nature.

The requested variances do not meet the general intent and purpose of the Official Plan and Zoning By-law, are not considered to be desirable for the appropriate development of the land and are not considered to be minor in nature. Staff recommended refusal of the variances.

Engineering Services

Engineering review was completed under the site plan application (SP18-009) as such we have no comments on the requested variances.

We agree with the recommendations made by the Planning and Building staff.

Building Services

The subject property is in the Residential General Apartment (R.4A) Zone which permits an apartment. The applicant is requesting an angular plane of 59 degrees and to vary the definition of "finished grade" to allow it to be the grade at the front entrance of the building. Table 5.4.2 – Regulations Governing R.4 Zones, Row 10, Column 1 of Zoning By-law (1995)-14864 as amended, permits a maximum building height of 8 storeys in R.4A Zones and to be in accordance with Section 4.16, angular planes.

An angular plane from a street means an imaginary inclined plane, rising over a lot, drawn at a specified angle from the horizontal, the bottom side of which is coincidental with the centre line of the street. It is to have a maximum angle of 45 degrees. Building height is measured as the vertical dimension between the average finished grade to the average height between the eaves and ridges, or if a flat roof, to the highest point of the roof's surface or parapet, whichever is greater. Finished grade means the average elevation of the finished surface of the ground,

excluding any artificial embankment, immediately adjoining the base of the exterior walls or supports of a building or structure.

The proposed height of the building also appears to be more than the permitted maximum of 8 storeys as shown by the Angular Plane Section on the elevation sketch but cannot be confirmed since only the front elevation is shown. The applicant states that the appeared height of the building from the Whitelaw Road frontage is 8 storeys, but does not state that the appeared height of the building from within the site and the Elmira Road frontage could be 12 storeys.

A minor variance can be granted to a regulation of the zoning by-law, but a definition is not a regulation and staff questions the appropriateness of altering a definition. Varying the definition of finished grade to be calculated from the front door entrance on Whitelaw Road will also have the consequence of allowing the building to have greater height than permitted.

Building Services has concerns with the proposed variance to vary the definition of "finished grade" and supports Planning and Engineering recommendations.

Comments from the Public

None

Contact Information

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